

## HUMAN SERVICES DEPARTMENT[441]

### Notice of Intended Action

#### **Proposing rule making related to dependent adult abuse and providing an opportunity for public comment**

The Human Services Department hereby proposes to amend Chapter 107, “Certification of Adoption Investigators,” Iowa Administrative Code.

#### *Legal Authority for Rule Making*

This rule making is proposed under the authority provided in Iowa Code section 237.3.

#### *State or Federal Law Implemented*

This rule making implements, in whole or in part, Iowa Code section 237.3.

#### *Purpose and Summary*

The rules in Chapter 107 were reviewed as part of the Department’s five-year rules review. As a result, clarification on the inclusion of dependent adult abuse in the evaluation process for record checks is proposed to be added to the administrative rules. Forms are being updated to add dependent adult abuse as a category. Language is being updated to include updated categories of record checks and reports.

#### *Fiscal Impact*

This rule making has no fiscal impact to the State of Iowa.

#### *Jobs Impact*

After analysis and review of this rule making, no impact on jobs has been found.

#### *Waivers*

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to rule 441—1.8(17A,217).

#### *Public Comment*

Any interested person may submit written comments concerning this proposed rule making. Written comments in response to this rule making must be received by the Department no later than 4:30 p.m. on July 5, 2022. Comments should be directed to:

Nancy Freudenberg  
Department of Human Services  
Hoover State Office Building, Fifth Floor  
1305 East Walnut Street  
Des Moines, Iowa 50319-0114  
Email: [appeals@dhs.state.ia.us](mailto:appeals@dhs.state.ia.us)

#### *Public Hearing*

No public hearing is scheduled at this time. As provided in Iowa Code section 17A.4(1)“b,” an oral presentation regarding this rule making may be demanded by 25 interested persons, a governmental

subdivision, the Administrative Rules Review Committee, an agency, or an association having 25 or more members.

*Review by Administrative Rules Review Committee*

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rule-making actions are proposed:

ITEM 1. Amend subrule 107.4(5), introductory paragraph, as follows:

**107.4(5) Record checks.** The department of inspections and appeals shall submit record checks for each new applicant and those applying for recertification to determine whether they have any founded child abuse reports, dependent adult abuse reports or convictions or have been placed on the sex offender registry. The department of inspections and appeals shall use Form 470-0643, Request for Child Abuse and Dependent Adult Abuse Information, and Form 595-1396, DHS Criminal History Record Check, Form B<sub>2</sub> for this purpose. The department shall not certify the applicant with a record of founded child abuse, dependent adult abuse, a criminal conviction, or placement on the sex offender registry as an adoption investigator<sub>2</sub> unless evaluation of the founded abuse or crime indicates approval for certification.

ITEM 2. Amend subparagraph **107.5(2)“a”(6)** as follows:

(6) The applicant has a founded child abuse, dependent adult abuse or criminal record conviction, unless an evaluation of the founded abuse or criminal conviction is conducted by the department of inspections and appeals which concludes that the abuse or crime does not merit prohibition of certification.

ITEM 3. Amend paragraph **107.8(1)“c”** as follows:

c. Record checks. The certified adoption investigator shall perform record checks for each applicant and for the other persons living in the home of the applicant as follows:

(1) The records of the applicants shall be checked:

1. On the Iowa central abuse registry using the Request for Child Abuse and Dependent Adult Abuse Information form;
2. By the Iowa division of criminal investigation, using the DHS Criminal History Record Check<sub>2</sub> Form B;
3. On the Iowa sex offender registry;
4. On the child abuse and dependent adult abuse registry of any state where the applicant has lived during the five years prior to the issuance of the investigative report; and
5. For a national criminal history through fingerprinting or another biometric identification-based process accepted by the federal government.

(2) The records of persons aged 14 or older living in the home of the applicant shall be checked:

1. On the Iowa central abuse registry using the Request for Child Abuse and Dependent Adult Abuse Information form;
2. By the Iowa division of criminal investigation, using the DHS Criminal History Record Check<sub>2</sub> Form B; and
3. On the Iowa sex offender registry.

(3) Out-of-state child abuse checks, dependent adult abuse checks and national criminal history checks may be completed on any adult in the home of the applicant if the certified adoption investigator has reason to do so.

(4) and (5) No change.

ITEM 4. Amend paragraph **107.8(1)“d”** as follows:

*d.* Evaluation of record. If there is a record of founded child abuse, dependent adult abuse or a criminal conviction for the applicant or any other adult living in the home of the applicant, the applicant shall not be approved to adopt, unless an evaluation determines that the abuse or criminal conviction does not warrant prohibition of approval.

(1) The evaluation shall consider the nature and seriousness of the founded child abuse, dependent adult abuse or crime in relation to adoption, the time elapsed since the commission of the founded abuse or crime, the circumstances under which the abuse or crime was committed, the degree of rehabilitation, the likelihood that the person will commit the abuse or crime again, and the number of abuses or crimes committed by the person.

(2) The person with the founded child abuse, dependent adult abuse or criminal conviction report shall complete and return the Record Check Evaluation form within ten calendar days of the date on the form to be used to assist in the evaluation. Failure of the person to complete and return the form within the specified time frame may result in a written denial of approval for adoption.

(3) No change.

(4) If the applicant, or any other person living in the home of the applicant, has a founded child or dependent adult abuse report, has been convicted of an aggravated misdemeanor or felony at any time, or has been convicted of a simple or serious misdemeanor that occurred within five years prior to application, a certified adoption investigator shall initially conduct the evaluation.

1. No change.

2. If the certified adoption investigator determines that the applicant should be approved despite the abuse or criminal conviction, the certified adoption investigator shall provide copies of the child abuse report, dependent adult abuse report or criminal history record and the Record Check Evaluation form to the Administrator, Division of Adult, Children and Family Services, Department of Human Services, Hoover State Office Building, Des Moines, Iowa 50319-0114. Within 30 days, the administrator shall determine whether the abuse or crime merits prohibition of approval and shall notify the certified adoption investigator in writing of that decision. The certified adoption investigator shall mail the applicant the department's written decision regarding the evaluation of an abuse or crime.

ITEM 5. Amend subparagraph **107.8(1)“f”(4)** as follows:

(4) The applicant or any person residing in the home has a record of founded child abuse or dependent adult abuse, unless an evaluation of the founded child abuse or dependent adult abuse has been made by the department, which concluded that the founded child abuse or dependent adult abuse does not merit prohibition of approval of an adoption application.

ITEM 6. Amend subparagraph **107.8(1)“g”(1)** as follows:

(1) The child abuse, dependent adult abuse and criminal history record checks, except for national criminal history checks, shall be repeated. If there are new founded abuses or convictions of crimes that were not evaluated in the previous home study, they shall be evaluated using the process set forth in paragraph 107.8(1)“d.”

ITEM 7. Amend subparagraph **107.8(1)“h”(2)** as follows:

(2) When a person aged 14 or older moves into the home, the investigator shall perform checks on the Iowa central child and dependent adult abuse registry, by the division of criminal investigation, and on the sex offender registry. The record check evaluation process shall be completed if the person has a criminal conviction, ~~or~~ founded child abuse report, founded dependent adult abuse report or is on the sex offender registry.